

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, *ex rel.* W.A. DREW
EDMONDSON, in his capacity as ATTORNEY
GENERAL OF THE STATE OF OKLAHOMA,
et al.

Plaintiffs

vs.

TYSON FOODS, INC., *et al.*

Defendants

05-CV-00329-GKF-PJC

CAL-MAINE FOODS, INC.'S SEPARATE
PROPOSED FINDINGS OF FACT AND CONCLUSION OF LAW

Cal-Maine Foods, Inc. (hereinafter, "Cal-Maine") separately submits the following Cal-Maine-specific proposed Findings of Fact and Conclusion of Law in addition to the proposed Findings of Fact and Conclusions of Law submitted jointly on behalf of all defendants. Cal-Maine otherwise relies upon the proposed Findings of Fact and Conclusions of Law submitted jointly by all defendants.

Proposed Findings of Fact

1. Cal-Maine had egg production in the IRW only from 1989 through 2005. (Tr. at 4412: 7-10) It presently has no production in the IRW, nor has it had any production in the IRW since January 2005. (OK Ex. 6082)

2. When it had production in the IRW, Cal-Maine did not have broilers. Its birds consisted of layers, breeders hens, pullets (Tr. at 4444: 6-18)(OK Ex. 6082), and roosters. (Tr. at 4413: 13-25, 4414: 1-5)

3. One of the lines of causation proof offered by the plaintiff consisted of an attempted “ratio analysis” by Dr. Bert Fisher. Dr. Fisher’s attempted ratio analysis started with a composite mix of litter samples taken from contract growers associated with some of the defendants. (Tr. 2331: 16-25, 2332: 1-17) Dr. Fisher, however, had no litter or manure sample from Cal-Maine birds. (Tr. at 2692: 3-15)

4. Dr. Fisher used his ratio analysis in an attempt to compare levels of copper, arsenic, zinc, and phosphorus found in his mix of litter samples to levels of those constituents in sediment samples gathered throughout the IRW. (Tr. 2336: 15-20)

5. Dr. Fisher’s attempted ratio analyses could have no application to Cal-Maine because Dr. Fisher never had a sample of litter or manure from Cal-Maine birds for purposes of comparison. Further, the plaintiff offered no evidence proving or suggesting that litter or manure from Cal-Maine birds is similar in levels of copper, arsenic, phosphorus, or zinc to levels of those constituents found in the litter sample mix used by Dr. Fisher. The probability that such a showing could have been made is highly unlikely as Cal-Maine’s feed did not contain arsenic, one of Dr. Fisher’s four analytes, in its feed. (Tr. 2694: 10-18)

6. The plaintiff offered no proof supporting its contention that Cal-Maine Foods, Inc. should be found legally liable for any acts or omissions of Benton County Foods, LLC.

Proposed Conclusion of Law

1. The Court finds that Cal-Maine Foods, Inc. has no actual or potential legal liability herein for any acts or omissions of Benton County Foods, LLC.

Respectfully submitted,

CAL-MAINE FOODS, INC.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of February, 2010, I electronically
transmitted the foregoing document to the following:

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Dated: February 5, 2010

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